

Hearing Date: April 26, 2011
10:00 a.m. (E.S.T.)
Objection Due: April 19, 2011

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
DEWITT REHABILITATION AND : Case No. 11-10253 (ALG)
NURSING CENTER, :
: :
Debtor. :
-----X

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
THE VERIFIED MOTION OF CARDINAL HEALTH 411, INC. FOR AN ORDER:
(I) ALLOWING AND DIRECTING PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIMS; AND (II) GRANTING RELIEF FROM THE AUTOMATIC STAY, FOR
CAUSE, TO SETOFF MUTUAL PRE-PETITION OBLIGATIONS**

TO THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the “Committee”) in the above-captioned bankruptcy case, by and through its attorneys, hereby submits its objection (the “Objection”) to Cardinal Health 411, Inc.’s (“Cardinal Health”) verified motion for (i) the allowance and payment of administrative expense claims and (ii) relief from the automatic stay, for cause, to setoff mutual pre-petition obligations (the “Motion”), dated March 31, 2011 [Doc. No. 64]. In support of this Objection, the Committee respectfully states as follows:

1. On January 25, 2011 (the “Petition Date”), DeWitt Rehabilitation and Nursing Center (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the

United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). No trustee or examiner has been appointed in the Debtor’s case and the Debtor continues to operate and manage its property as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Committee was appointed by the United States Trustee for this Region pursuant to sections 1102(a) and 1102(b) of the Bankruptcy Code on February 3, 2011. The Committee is currently composed of the following members: (i) 1199/SEIU Greater New York Pension, Benefit & Related Funds; (ii) PatientCare Associates, Inc.; (iii) Medline Industries, Inc.; (iv) Cardinal Health; (v) Duso Food Distributors, Inc.; (vi) HR Healthcare Staffing Remedies; and (vii) United Staffing Registry.

Cardinal Health 20-Day Claim

3. Cardinal Health seeks the entry of an order (i) allowing it an administrative expense claim, pursuant to section 503(b)(9) of the Bankruptcy Code, in the amount of \$116,534.35 (the “20-Day Claim”) for pharmaceutical products Cardinal Health states it delivered to the Debtor during the twenty days before the Petition Date (the “20-Day Products”) and (ii) directing the Debtor to pay the 20-Day Claim pursuant to section 503(a) of the Bankruptcy Code.

4. To the extent the Debtor confirms its receipt of the 20-Day Products during the twenty days before the Petition Date and confirms the accuracy of the amount of the 20-Day Claim, the Committee has no objection to the allowance of the 20-Day Claim pursuant to section 503(b)(9) of the Bankruptcy Code. The Committee objects, however, to the immediate payment of any portion of the 20-Day Claim. Rather, such payment on account of the 20-Day Claim should be made under a chapter 11 plan confirmed by the Court.

Cardinal Health Post-Petition Claim

5. Cardinal Health seeks the entry of an order (i) allowing it an administrative expense claim, pursuant to section 503(b)(1) of the Bankruptcy Code, in the amount of \$5,945.87 (the “Post-Petition Claim”) for pharmaceutical products Cardinal Health states it delivered to the Debtor since the Petition Date but remain unpaid (the “Post-Petition Products”), and (ii) directing the Debtor to pay the Post-Petition Claim pursuant to section 503(a) of the Bankruptcy Code.

6. To the extent the Debtor confirms its receipt of the Post-Petition Products on or after the Petition Date and confirms the accuracy of the amount of the Post-Petition Claim, the Committee has no objection to the allowance of the Post-Petition Claim pursuant to section 503(b)(1) of the Bankruptcy Code and, provided the Debtor has readily available funds, to the payment of the Post-Petition Claim pursuant to section 503(a) of the Bankruptcy Code.

Cardinal Health Setoff of Credits Against Pre-Petition Claim

7. Cardinal Health asserts it has a right to setoff an accrued credit on the Debtor’s account with Cardinal Health in the amount of \$26,358.17 as of the Petition Date (the “Credits”) against the sum of \$265,313.80, which Cardinal Health states is the amount due and owing by the Debtor for goods, including the 20-Day Products, delivered prior to the Petition Date (the “Pre-Petition Claim”). Cardinal Health seeks the entry of an order lifting the automatic stay to allow it to exercise its asserted setoff rights.

8. To the extent the Debtor confirms that the requirements necessary to permit a setoff under these circumstances under section 553 of the Bankruptcy Code are satisfied, the Committee has no objection to Cardinal Health’s relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code for the limited purpose of allowing it to setoff the Credits against the Pre-Petition Claim.

WHEREFORE, for all of the foregoing reasons, the Committee respectfully requests that the Court deny the Motion except on the terms and conditions stated herein and grant the Committee such other and further relief as is just and proper.

Dated: Uniondale, New York
April 19, 2011

FARRELL FRITZ, P.C.

By: /s/ Robert C. Yan.
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